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Horst M. Kasper
13 Forest Drive
Warren, NJ 07059

In re Application of :
KRAEMER, Norbert :
Application No.: 10/531,559 :
PCT No.: PCT/DE01/01903 :
Int. Filing Date: 20 May 2001 :
Priority Date: 22 May 2000 :
Attorney Docket No.: MSA260PR :
For: METHOD AND DEVICE ... PILLS OR :
TABLETTES :

DECISION ON
PETITIONS
UNDER 37 CFR 1.42 and 1.137(b)

This decision is in response to applicant's petition under 37 CFR 1.137(b) filed on 14 April 2005 and the included declaration with an indication that the inventor is deceased.

BACKGROUND

On 20 May 2001, applicant filed international application PCT/DE01/01903, which claimed a priority date of 22 May 2000. A copy of the international application was transmitted to the Office by the International Bureau on 29 November 2001. The deadline for entry into the national stage in the United States was 21 November 2002.

On 14 April 2005, applicant filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee, a petition to revive and a declaration.

DISCUSSION

Petition Under 37 CFR 1.137(b)

A petition to revive an abandoned application under 37 CFR 1.137(b) must be filed without intentional delay from the time the application became abandoned and/or applicant first became aware of the abandoned status of the application. A petition under 37 CFR 1.137(b) must be accompanied by (1) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional, (2) a proposed response, (3) the petition fee required by law (37 CFR 1.17(m)), and (4) a terminal disclaimer and fee (if the international application was filed prior to June 8, 1995).

Items (2), (3) and (4) have been satisfied. The basic national fee and petition fee have been paid. A terminal disclaimer is not required as the application was filed on or after 08 June 1995.

Item (1) has not been satisfied. As this application has been abandoned for an extended period of time, applicant must state or literally mean "the entire delay in filing the required reply

from the due date for the reply until the filing of a grantable petition was unintentional. Applicant's statement will not be construed.

Request Under 37 CFR 1.42

A review of the declaration submitted on 14 April 2005 reveals that it is not a current PTO form, nor is it accompanied by a statement that the translation of the foreign text is accurate. To use the form, applicants must file either a statement that the translation is accurate or use the current approved PTO form. 37 CFR 1.69.

Under 35 U.S.C. §117, legal representatives of deceased inventors may make application for patent upon compliance with the requirements and on the same terms and conditions applicable to the inventor. The "legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent." 37 CFR 1.42.

The declaration is signed by a legal representative. The declaration must list the inventor and his citizenship and the legal representative and the legal representative's citizenship, residence and postal address. See 37 CFR 1.497. The declaration appears to list the information for the inventor, but not for the legal representative, as required. As such, the declaration does not satisfy 37 CFR 1.497(a)-(b) and 37 CFR 1.42. Nor does it comply with 37 CFR 1.69.

CONCLUSION

For the above reasons, the petition under 37 CFR 1.137(b) is **DISMISSED** without prejudice and the request for status under 37 CFR 1.42 is **REFUSED**.

Any request for reconsideration must be filed within a time period of **TWO (2) MONTHS** from the mail date of this Decision. **THIS PERIOD FOR RESPONSE MAY BE EXTENDED UNDER 37 CFR 1.136(a)**. Any request for reconsideration of this decision should include a cover letter entitled "Renewed Submission Under 37 CFR 1.42 and 1.137(b)".

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



Erin P. Thomson
Attorney Advisor
PCT Legal Administration

Telephone: (571)272-3292
Facsimile: (571)273-0459